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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 79—1448

NAGATA BROTHERS FARMS,
Petitioner,
v.
THE AGRICULTURAL LABOR RELATIONS BOARD OF THE STATE OF CALIFORNIA,
Respondent,
AND
UNITED FARM WORKERS OF AMERICA, AFL-CIO
Real Party in Interest.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FOURTH DISTRICT DIVISION ONE

BRIEF FOR RESPONDENT IN OPPOSITION

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ON PETITION FOR A WRIT OF CERTIORARI
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COURT OF APPEAL

RESPONDENT'S BRIEF IN OPPOSITION

The respondent, Agricultural Labor Relations Board of the State of California, respectfully requests that this Court deny the petitioner's writ of certiorari seeking review of the Supreme Court of California's denial of petitioner's request for hearing.

QUESTIONS PRESENTED

1. Does this Court have jurisdiction to review a state administrative order granting union organizers a limited right of vehicular access where the terms of the order are not final, the order rests on an independent state ground, and the order results from a careful balancing of employee organizational rights and employer property interests?

2. Does a substantial federal question arise, although it was not raised in the state courts below, from the California court procedure of denying without opinion unmeritorious petitions for review of administrative orders after briefing by all the parties?

STATEMENT OF THE CASE

A. INTRODUCTION: The Agricultural Labor Relations Act

For decades California has witnessed strife and conflict in its fields and vineyards. Federal labor laws have brought no relief to the California fields because those statutes exempt agricultural employees from their coverage. (29 U.S.C. §§ 152 (3), 203(f).)

To bring "certainty and a sense of fair play" to an "unstable and potentially volatile condition," (ALRA Preamble, Stats. 1975, Third Ex. Sess., Chap. 1, § 1), the California Legislature enacted the Agricultural Labor Relations Act of 1975 (hereinafter, "ALRA" or the "Act"). (Cal. Labor Code §§ 1140, et seq.) A comprehensive agricultural labor relations statute, the ALRA

establishes a five-member Agricultural Labor Relations Board (hereinafter, "ALRB" or the "Board") (Cal. Labor Code § 1141); grants employees organizational rights (Cal. Labor Code § 1152); provides for secret ballot elections to select a collective bargaining representative or no union (Cal. Labor Code §§ 1156–1159); and characterizes a variety of acts by employers or unions as unfair labor practices, including interference with employees' organizational rights. (Cal. Labor Code §§ 1153 –1155.7.) While modeled in some respects on the National Labor Relations Act, the ALRA's election provisions are significantly different from those under the NLRA, reflecting the exigencies of a seasonal industry with a mobile workforce.

B. The Findings of the ALRB in the Instant Case

Petitioner, Nagata Brothers Farms, a partnership, operates three ranches producing tomatoes and strawberries. The violation at issue here occurred at one of the ranches, referred to as the "Wilshire Ranch", located in northern San Diego County. The Wilshire Ranch is composed of four leased parcels, each of which is a square with sides one-quarter of a mile in length. Three parcels adjoin north to south, and the fourth parcel is directly east of the southern-most parcel so that all four parcels form an "L". George and Harry Nagata are involved in the day to day management of the farm.

The incident at issue in this case, an attempt by United Farm Workers of America, AFL-CIO, (hereinafter UFW) organizers to enter the farm as a part of an organizing campaign, took place at the end of Wilshire Road

on the Wilshire Ranch. Vehicular entry to this ranch at any place other than the gate at the foot of Wilshire Road is precluded by fencing, ditches, the contour of the land, and a gate near the home of Harry Nagata which itself is on the ranch. The gate which prevents access at Wilshire Road is a single locked cable stretched across the road. A number of individuals or organizations have keys to the lock, including the three Nagata brothers, their foreman, the Immigration and Naturalization Service, the Oceanside Police Department, the gasoline company, the propane delivery truck service which refuels the large propane stove used by workers, and the catering service, which provides food to the employees during the work day and after work.

On November 22, 1977, UFW representative Scott Washburn served a notice of intent to take access on petitioner at its business office. The next day, representatives of Nagata Brothers Farms and other growers whose employees were being organized by the UFW met with the ALRB's San Diego Regional Director and Washburn to work out an agreement for organizer access to employees. Although the meeting lasted about four hours and there was discussion regarding the mechanics of access, no agreement was reached.

On November 26, 1977, at approximately 4:30 p.m., a group of union organizers arrived at the Wilshire Road gate. The gate was locked and they could not drive in. They went to petitioner's office and asked for entry. Washburn informed Harry Nagata that they wanted to drive on the ranch and talk to employees where they

lived. Harry Nagata denied knowledge of, or responsibility for, where the workers lived. Washburn made no further attempts to enter the ranch that day. The Board concluded that this denial of access violated California Labor Code section 1153(a), which prohibits interference, restraint, or coercion of agricultural employees in the exercise of rights guaranteed by California Labor Code section 1152.

At the time of this incident, Nagata Brothers Farms employed about 220 workers. Approximately 25 commuted to the ranch each day. The other 195, the Board found, lived on the ranch in conditions of extreme deprivation.[1] Testimony, some by the Nagata brothers themselves, established that the 195 "local" employees lived in plastic tents, caves, or boxes in the rows between the tomato vines. They cooked over campfires or used the propane stove provided by the company, cooking food purchased from the catering service which petitioner permitted to drive onto the property after work hours. Clothes, food, blankets, and household items were occasionally seen in the fields. The company paid the "locals" $2.50 per hour—40 cents per hour less than was paid to the commuters, who also received a separate ride allowance. The workers living on the property had no cars, and there was no public transportation to the ranch. "Locals" had been seen to run away at the sight

[1] Petitioner disputes this finding by the Board. (Petition, p. 7.) However, this Court generally will not re-examine a state court's findings of fact. (*Portland Ry. Co.* v. *Oregon R.R Comm.* 229 U.S. 397, 411–412 (1913); *Fry Roofing Co.* v. *Wood* 344 U.S. 157, 160 (1952).)

of agents or automobiles from the federal Immigration and Naturalization Service, suggesting that they were undocumented workers.[2]

The evidence also established that the employees' dwellings were widely scattered throughout the ranch and that vehicular travel was the customary method of travel within the ranch. Besides the use of cars or trucks by the police, Immigration and Naturalization Service, gasoline company, and catering service, the company transported employees to different work sites by truck. The above factors demonstrate the reasonableness of the Board's limited access order.

C. The Procedural History of This Case

A hearing was held before an administrative law officer (hereinafter ALO) on April 4 through 7, 1978. On May 6, 1978, the ALO concluded that petitioner had, in fact, violated California Labor Code section 1153(a) by engaging in the conduct alleged in the complaint.[3] On May 23, 1979, the ALRB affirmed the rulings, findings, and conclusions of the ALO, set forth its reasoning, and modified the ALO's recommended order.[4] Petitioner sought review thereof in the California Court of Appeal,

[2] The protections of the ALRA are available to all California agricultural employees, whether documented or undocumented. *Miranda Mushroom Farm Inc.*, 6 ALRB No. 22 (1980). However, federal law makes it a crime to harbor illegal aliens. 8 U.S.C. § 1324(a)(3). This may explain petitioner's refusal to admit that employees resided on its property. However, when Nagata Brothers provided the ALRB with a list of its employees' names and addresses, the list gave petitioner's address for 196 workers.

[3] Petitioner's Appendix A.

[4] Petitioner's Appendix B.

Fourth Appellate District, Division One, by filing its petition for review on June 21, 1979. (Cal. Labor Code § 1160.8.)[5] The Board filed the administrative record with the court on July 2, 1979, and the court ordered a briefing schedule in accord with California Rules of Court, Rule 16(a). Because an extension of time was granted to petitioner, petitioner's brief was not filed until August 31, 1979. Respondent ALRB's brief was filed October 1, 1979, and real party's (UFW) brief was filed on October 31, 1979. Petitioner's reply brief was filed on November 15, 1979. On November 16, 1979, after full briefing by all parties, the Court of Appeal denied the petition for writ of review.[6] Petitioner then filed a petition for hearing, accompanied by a brief, with the California Supreme Court (Cal. Rules of Court, Rule 28); the ALRB filed an opposition brief. The petition for hearing was denied on December 13, 1979.[7]

I

THE ACCESS PROVISION OF THE BOARD ORDER IS NOT FINAL. FURTHER, PETITIONER RAISES NO SUBSTANTIAL FEDERAL QUESTION WITH RESPECT TO THAT PROVISION

A. The Access Provision is Not Final

In order for this Court to acquire jurisdiction, there must have been a final judgment in the highest state court. (28 U.S.C. § 1257.) Under the finality doctrine, an

[5] Petitioner's Appendix C.

[6] Petitioner's Appendix D.

[7] Petitioner's Appendix E.

administrative order which has been reviewed by the highest state court must be the final adjudication of a completed administrative process in order to be reviewable by the Supreme Court. (Stern and Gressman, *Supreme Court Practice,* 5th Ed. (1978) p. 197; *Rochester Telephone Corp.* v. *United States,* 307 U.S. 125, 130–131 (1939).)

Republic Natural Gas Co. v. *Oklahoma,* 334 U.S. 62 (1948) illustrates this principle well. There the Oklahoma Corporation Commission ordered Republic to take natural gas ratably from another gas company. However, the terms and conditions of the taking were left to be agreed upon between the two companies, or if there was no agreement, to be determined by further order of the commission. On appeal, the United States Supreme Court held that the administrative judgment was not final because the manner of the taking had been left open for a later agreement or administrative determination.

The challenged portion of the ALRB order in this case is nearly identical to that in *Republic Natural Gas.* Section 2(i) of the order—the only provision challenged by petitioner—requires the company to "permit UFW representatives to drive to the dwelling sites of employees on its property at reasonable times; *such times are to be determined by the Regional Director if the parties fail to agree thereon.*" (Petitioner's Appendix B, p. 9, emphasis added.) Thus, the times and extent of the vehicular access are left open. Nothing is now final.

This lack of finality is underscored by the petition

itself. Petitioner has made clear that it does not oppose vehicular access per se. It states: "Petitioner was, and is, willing to permit vehicular access upon notice. . . ." (Petition, p. 10.) Since the Board order leaves the access mechanics to be agreed upon by the parties or decided by the regional director, petitioner may find itself fully satisfied with the ultimate access arrangements.

Under these circumstances, adjudication by this Court would be premature and therefore jurisdictionally defective.[8]

B. The Board's Access Analysis Rests on an Adequate Statutory Ground

In reality, petitioner seems disturbed by the language of the Board's decision, rather than by the judgment. However, that is no basis on which to predicate this Court's jurisdiction. As the Court said in *Black* v. *Cutter Laboratories,* 351 U.S. 292, 297–298 (1955), "This Court, however, reviews judgments, not statements in opinions."

The petition makes much of the First Amendment analysis contained in portions of the Board opinion. That concern is misplaced. A careful reading demonstrates that the Board's access reasoning rested as fully on statu-

[8] Petitioner wrongfully characterizes the Board order as providing "unfettered" or "unrestricted" vehicular access. (Petition, pp. 2, 10.) This plainly false position demonstrates the insubstantiality of the petition. Since Nagata Brothers Farms is willing to provide vehicular access upon notice and the Board order requires nothing more, petitioner is complaining about a wrong which does not exist. The "question" raised by the petition is neither "substantial" nor "federal."

tory, as on constitutional, grounds. For example, the Board acknowledged "*its own* responsibility to protect employee rights" (Petitioner's Appendix B, p. 3, emphasis added); held that "Respondent interfered with employees' Section 1152 rights and violated Section 1153(a) on November 26, 1977, by making it impossible for the UFW representatives to drive to where the employees were living" (Petitioner's Appendix B, p. 3), and imposed remedies "to correct the effects of proven violations of the Act." (Petitioner's Appendix B, p. 4.)

Thus, the Board decision is fully supported on an independent statutory basis. Furthermore, because the California Court of Appeal which reviewed the Board's decision issued no opinion in rendering its judgment, this Court should presume that the state court's decision was based upon the nonfederal statutory ground and should decline jurisdiction. (*Lynch* v. *New York ex rel. Pierson,* 293 U.S. 52, 54–55 (1934); *Phyle* v. *Duffy,* 334 U.S. 431 (1948).)

C. The Board Reached a Proper Accommodation Between Employee Organizational Rights and Petitioner's Property Rights

Petitioner's suggestion that the Board order constitutes an unwarranted infringement of its property rights is erroneous.

Prior decisions of this Court have held that private property rights must yield where necessary to accommodate the organizational rights of employees. (*NLRB* v. *Babock & Wilcox Co.,* 351 U.S. 105 (1956).) "In each generic situation, the primary responsibility for making

this accommodation must rest with the Board in the first instance. 'The responsibility to adapt the Act to changing patterns of industrial life is entrusted to the Board.' " (*Hudgens* v. *NLRB,* 424 U.S. 507, 522–523 (1976).) The proper accommodation depends heavily on the context of the particular case. (*Id.*)

In reaching the appropriate accommodation in this case, the ALRB was true to the principles of *Hudgens,* paying careful attention to the context in which this case arose. The Board especially noted the "severe deprivation and vulnerability" of petitioner's employees (Petitioner's Appendix B, p. 3), who lived in tents and caves between the tomato rows, cooking over campfires and leaving their belongings in the fields. (Petitioner's Appendix A, pp. 6–7.) The Board was aware that these workers were isolated on the ranch, since they had neither cars nor access to public transportation. (*Id.,* at 7.) These circumstances made the workers peculiarly subject to the company's power and control, in violation of state public policy. (Cal. Lab. Code § 1140.2.)

By contrast, granting a limited vehicular access right to union organizers would hardly constitute a significant infringement of the company's property rights. Vehicular travel was the only method of reaching the many employees living scattered throughout the ranch, and was the customary mode of travel by the company and all others entering the ranch. (Petitioner's Appendix A, p. 15.) At the time of the November 1977 access incident, the parties had to reconvene in order to discuss access to employees living on the ranch. (Petitioner's

Appendix B, p. 6.) The Board's order simply required the parties to negotiate the access agreement left incomplete two years earlier.

The accommodation reached by the Board strikes a proper balance between conflicting interests in light of the unique circumstances of this case. The petition raises no substantial federal question in this regard.

II

PETITIONER RAISES NO SUBSTANTIAL FEDERAL QUESTION WITH RESPECT TO JUDICIAL REVIEW OF THE ALRB'S DECISION AND ORDER

A. Petitioner did not Challenge the Constitutionality of California's Judicial Review Scheme in the Courts Below. This Claim is Raised for the First Time Here

It has long been established that this Court is vested with no jurisdiction unless a federal question was raised in the state court below. (*Cardinale* v. *Louisiana* 394 U.S. 437, 438 (1969); *Tacon* v. *Arizona* 410 U.S. 351, 352 (1973).) In its petition and reply brief to the court of appeal and its petition for hearing in the California Supreme Court, petitioner did not even imply, let alone argue, that the review scheme pursuant to California Labor Code section 1160.8 violates a federal constitutional right.

California Rules of Court, Rules 12, 28(d), and 56 (governing review in the court of appeal and hearing in the Supreme Court) require, at a minimum, setting forth what is necessary for a proper consideration of the case.

Petitioner has an affirmative duty in the instant case to show not only the existence of a federal question but also that it was properly raised under state of law. (See *Williams* v. *Georgia* 349 U.S. 375, 382–383 (1955).) Petitioner has failed on both counts. Attached as Appendix A hereto is a copy of the Table of Contents from petitioner's briefs to the California Court of Appeal and Supreme Court. It is plain that the constitutionality of the review scheme here in question was not presented to those courts.

The federal question was not properly or timely raised so as to give this Court jurisdiction to review the judgment on writ of certiorari. (See Supreme Court Rule 23(1)(f).)

B. Petitioner's Attack on California's Review Scheme Fails Because a Decision to Deny a Petition for Writ of Review is, in Fact, a Decision on the Merits of the Case

Petitioner does not contend that it was denied due process of law in the administrative hearing. Nor does petitioner challenge the scope of review of a Board decision. Although it is unclear what exactly offends petitioner, the thrust of petitioner's complaint is that it did not receive a written decision and that this somehow means that it received perfunctory review. This contention is without substance.[9]

[9] Petitioner's reliance on *Morris* v. *Gressette* 932 U.S. 491 (1977) and *Abbott Laboratories* v. *Gardner* 387 U.S. 136 (1967) is not well taken. Both cases focus on whether judicial review is permitted at all. In *Morris* v. *Gressette* this Court concluded that Congress did not intend any judicial review of the administrative action. Thus, *Morris* undercuts petitioner's contention that all administrative decisions must be subject to plenary judicial review.

The rule in California is that a denial of a writ, where the writ proceeding is the sole avenue of review, is a determination on the merits of the case. (*People* v. *Western Air Lines Inc.* 42 Cal.2d 621, 630–631, 268 P.2d 723 (1954), app. dismd. 348 U.S. 859 (1954) [denial of review by the California Supreme Court of a Public Utility Commission's order is a decision on the merits]; *City of Union City* v. *Southern Pac. Co.* 261 Cal.App.2d 278, 67 Cal.Rptr. 816 (1968) [denial by court of petition to review a Public Utility Commission order is a decision on the merits both as to the law and the facts presented on review, even when the court's denial is without opinion.[10]

This Court has recognized this principle in *Napa Valley Co.* v. *R.R. Comm.,* 251 U.S. 366 (1920). In that case, an electric company petitioned the California Supreme Court to annul and vacate a commission order alleging that the rate-setting in question violated the federal constitution. A direct petition to the state Supreme Court was the sole method of review, but that Court denied the petition and refused to issue a writ. A successor to the electric company's contract sought relief; the commission moved to dismiss on the ground the state Supreme Court's denial of the writ, without opinion, was res judicata. This Court held that the "absence of an opinion by the Supreme Court did not affect the quality

[10] In California, review of a public utility commission decision or order is by writ of certiorari or review directly to the California Supreme Court. (Public Util. Code §§ 1756 et seq.) As this is the sole avenue of review, a denial of such a writ is a decision on the merits.

of its decision or detract from its efficacy as a judgment upon the question presented." (*Napa Valley Co.* v. *R.R. Comm., supra,* at 373.)

California Labor Code section 1160.8 sets forth the scheme for review of ALRB orders. Any person aggrieved by a final order of the Board may obtain review of the order in the court of appeal by filing a written petition requesting the order be modified or set aside. Upon the filing of such a petition, the court serves notice upon the Board thereby obtaining jurisdiction of the case. The findings of the Board with respect to questions of fact, if supported by substantial evidence on the record as a whole, are conclusive.

Tex-Cal Land Management, Inc. v. *Agricultural Labor Relations Bd.,* 24 Cal.3d 335, 156 Cal.Rptr. 1, 595 P.2d 579 (1979) is the definitive interpretation of Labor Code section 1160.8. There the court noted the Act's numerous procedural safeguards, such as separation of prosecutorial and adjudicatory functions, notice, written pleadings, evidentiary hearings, and a requirement that orders be accompanied by findings based on the preponderance of the reported evidence. With these protections in mind, the court construed the statute as allowing petitions for writs of review to be denied without opinion or oral argument, in the court's sound discretion. However, the California Supreme Court cautioned that appellate courts "should not make that disposition . . . until after the petitioner has had reasonable time to file points and authorities in light of the record filed by the ALRB." (*Tex-Cal Land Management, Inc.* v. *Agricul-*

tural Labor Relations Bd., 24 Cal.3d at 351.) Thus, a party's due process rights are safeguarded at the administrative stage, and any party petitioning for review has an opportunity to fully brief all issues in light of a complete record. If a court determines that no material issues are presented, it need not write an opinion, but may simply deny the petition and thus affirm the Board. A court has discretion to deny a petition that is not meritorious—but such discretion in no way implies that the court may deny a petition without serious substantive consideration.[11]

Because the appellate court denied its petition for review soon after it filed its reply brief, petitioner suggests judicial review has been perfunctory. However, without standing over a judge's shoulder while he or she considers a case, it is impossible to know exactly how thorough the review is. In this case, the petition was filed on June 21, 1979 and the record was filed on July 2, 1979. Petitioner's brief was filed on August 31, 1979; respondent's brief was filed on October 1, 1979, and real party in interest's brief was filed on October 31, 1979. Petitioner's reply brief did not raise anything new. (See Respondent's Appendix A.) The court denied the petition on November 16, 1979. Thus, the petitioner's legal contentions were before the court of appeal for over

[11] *Tex-Cal Land Management, Inc.* holds that once a court of appeal denies a petition, it relinquishes jurisdiction. Enforcement of the Board's order is in the superior court. However, the superior court "shall not review the merits of the order." (Cal. Lab. Code § 1160.8.) The obvious implication is that there is no need for the superior court to review the merits of the order since the court of appeal has already made a decision on the merits.

four months and petitioner's brief for nearly two and one half months before the court acted. Surely, this is ample time for a considered judgment.

In short, that no opinion issued from the appellate court in this case says less about the quality of the review process than the court's view of the merits of the petition.[12] The procedural requirements which give petitioner an opportunity to fully brief the issues and which obligate the Board to file a certified record imply that review of Board decisions is a serious undertaking. Established California law holding that a denial of a petition is a decision on the merits reinforces the view that California judges would not make such a determination without seriously considering the case.

Finally, that the petition in this case was denied soon after the reply brief was filed, is not evidence from which to conclude that review was perfunctory. California law does provide for meaningful judicial review of orders and decisions of the State Agricultural Labor Relations Board and does not violate due process.

CONCLUSION

Petitioner's writ of certiorari should be denied by this Court, because the order of the Agricultural Labor Relations Board is not final, no substantial federal question has been raised, and the Board engaged in a careful

[12] The practice of denying unmeritorious appeals without opinion or oral argument, relying instead on the briefs, is also used by this Court. Stern & Gresseman, in *Supreme Court Practice,* 5th ed. (1978), at pages 317–321, discuss the need and reason for this procedure.

statutory balancing of a kind approved by this Court. The procedure for judicial review of ALRB decisions, chosen by the California legislature, does not violate due process because it ensures full consideration of the merits of petitioner's case even though it allows an unmeritorious petition to be denied without opinion.

DATED: May 22, 1980 Respectfully submitted,

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APPENDIX A

PETITIONER'S BRIEF: PETITION FOR HEARING IN THE SUPREME COURT